

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA07-1154

SHERRY HOLDINGS, LLC, and
SHERRY GROVES, INDIVIDUALLY
APPELLANTS

V.

ROBERT HEFLEY
APPELLEE

Opinion Delivered November 5, 2008

APPEAL FROM THE CARROLL
COUNTY CIRCUIT COURT,
[NO. CIV06-145ED]

HONORABLE ALAN D. EPLEY,
JUDGE

REVERSED AND REMANDED

LARRY D. VAUGHT, Judge

This is an appeal from a summary judgment quieting title in appellee Robert Hefley to a parcel of land that was the subject of a prior lawsuit between Hefley and appellant Sherry Groves. We reverse and remand.

On May 16, 2001, Groves bought the property in Carroll County from Afton Campbell and Hefley. She paid \$15,000 at closing and gave a promissory note for \$86,000, secured by a mortgage, which was filed. The interest conveyed by the deed was expressly subject to the mortgage that Hefley and Campbell had previously given to First National Bank of Green Forest. An escrow agent held a quitclaim deed from Groves to Campbell and Hefley as additional security in the event of Groves's default.

On October 15, 2002, Groves transferred the property by means of a warranty deed to Jurgen and Peggy Schroeder. On October 3, 2003, the Schroeders deeded the property to

Sherry Holdings, LLC, a limited liability corporation created by Groves, and of which she was the sole owner. Groves filed an action seeking damages for breach of contract and warranty of title in the Carroll County Circuit Court, No. CIV-2003-158, against Campbell, Hefley, and a title insurance company on November 10, 2003, alleging that they knew at the time of the sale that she intended to develop the property for profit and that an easement for ingress and egress, which was conveyed in the deed, was important for her plans to succeed. Groves further alleged that, in September 2003, she had agreed to sell the property to Juergen Schroeder and Peggy Schroeder, contingent upon the use of the easement, and that, upon discovering that it was not available, the Schroeders had canceled the deal. Groves asked for her lost profits. In the alternative to damages, Groves asked for rescission, restitution, and cancellation of her mortgage.

In their answer, Hefley and Campbell stated that they had received another easement in March 2002 and that they and Groves had signed an agreement to waive interest a few days later. They filed a counterclaim against Groves for breach of contract for the amount due on the note.

On April 13, 2005, the trial court sent a letter opinion to the parties in which he granted summary judgment to the title company because “The plaintiff, Sherry Groves, no longer has an interest in the property. The Warranty deed from the Schroeders (First America Exhibit 6) conveyed the property to a legal entity named Sherry Holdings, L.L.C.” On April 15, 2003, appellant Sherry Holdings, LLC, attempted to join as a plaintiff in a second amended complaint filed in Case No. CIV-2003-158, stating that Groves was its sole member

and that it was a third-party beneficiary of the contracts between Groves and the defendants. Requesting damages, appellants alleged that, at the time of closing, Campbell, Hefley, and the title company had a duty to disclose the pending lawsuit to Groves before the sale. In the alternative, they asked for rescission, damages, and a lien on the property to secure the payment of damages, after which Sherry Holdings would tender a conveyance of the property.

On May 13, 2005, the court entered an order striking the second amended complaint, including Sherry Holdings' attempt to enter as a plaintiff, and appellants' response to the appellees' motions for summary judgment because they were not timely filed. On June 29, 2005, the court entered an order granting summary judgment to Campbell, Hefley, and the title company.

On March 20, 2006, Hefley and Campbell filed a motion for specific performance alleging that, according to the note, Groves was in default and owed \$66,000 and that, pursuant to the mortgage, they were entitled to a quitclaim deed from Groves in lieu of foreclosure. They asked the court to direct Groves to give them a quitclaim deed or, in the alternative, asked that the court issue an order divesting Groves of all interest in the property and vesting title in them. In response, Groves denied that they were entitled to a quitclaim deed but admitted that, according to the court's prior orders, she owed them \$66,000. She alleged that she had reduced the principal due from \$101,000 to \$66,000 and that she had a \$35,000 equitable interest in the property.

On May 16, 2006, the circuit court found Groves in default and stated that, according to the mortgage, Hefley and Campbell could elect between two remedies: delivery of the

quitclaim deed or foreclosure of the mortgage. Campbell and Hefley elected to receive a quitclaim deed and asked that the original quitclaim deed from Groves to them, which was being held in escrow, be delivered. They also requested that the court require Groves

to execute a new Quit Claim that conveys the property from Sherry Groves, in her own right individually, and Sherry Holdings, LLC to Campbell and Hefley, to remove any clouds or encumbrances on the property. Sherry Holdings, LLC is the entity that currently holds title to the property as a result of transactions between Sherry Groves and the Schroeders.

In its order entered on June 16, 2006, the court directed the clerk to deliver the original quitclaim deed to Campbell and Hefley. It also ordered Groves to execute a quitclaim deed individually “*and* her entity, Sherry Holdings, LLC to Campbell and Hefley, to remove any clouds or encumbrances on the property. . . .” On Groves’s motion, the court set this order aside on July 20, 2006.

On October 6, 2006, the court entered an order dismissing the counterclaim against Groves with prejudice, stating that Campbell and Hefley had made a binding election of the remedy of specific performance; that the quitclaim deed from Groves to them had been delivered by the clerk and filed; and that no issues remained to be decided.

Hefley then filed the quiet-title action from which this appeal was taken, No. CIV-2006-145, against Sherry Holdings on November 3, 2006. He recited the history of action No. CIV-2003-158; stated that Groves was the sole member of Sherry Holdings, which had paid nothing for the conveyance from the Schroeders; and asked that the cloud on his title be removed. Sherry Holdings responded by denying that Hefley had acquired title to the property because “Sherry Groves was a stranger to the title to the property at the time her

conveyance was recorded” and pled the doctrines of res judicata, collateral estoppel, and election of remedies. Sherry Holdings filed a counterclaim against Hefley and Campbell, asserting that, pursuant to the doctrines of res judicata and collateral estoppel, their election of specific performance in the earlier action rendered the mortgage a nullity. It also alleged that the quitclaim deed from Groves to Campbell and Hefley was a nullity because Groves did not hold title when it was recorded.

On February 26, 2007, Hefley filed a fourth amended petition to quiet title with a motion to join Groves as a necessary party. He alleged that Groves had engaged in fraud in causing the Schroeders’ conveyance to Sherry Holdings and in failing to inform him when she filed the earlier lawsuit that the conveyance had occurred. He stated: “Sherry Groves and Sherry Holdings, LLC are in reality one and the same person and that Sherry Holdings, LLC is the alter ego of Sherry Groves and that the actions of one binds the other and the fiction of the LLC should be set aside and held for naught.” Hefley added a fraudulent-transfer claim against Groves for causing the Schroeders to make the conveyance to Sherry Holdings. He asked that the deed from the Schroeders to Sherry Holdings be set aside and that title be confirmed in him. In response, appellants asserted that Hefley had no title to cloud.

Appellants moved for summary judgment on March 19, 2007. In their reply to Hefley’s response, they stated:

Hefley has claimed the right to pierce the corporate veil of Sherry Holdings, LLC. There is nothing under the law of Arkansas or Tennessee which makes a single-member LLC or a single-shareholder corporation inherently evil. The single-member status of Sherry Holdings, LLC, however, does establish that the LLC is in privity with Sherry Groves, and that the claim-preclusion aspect of *res judicata* now bars Hefley from attempting to pursue remedies against the LLC, even though Hefley now seeks to raise new legal issues and seeks to assert additional remedies.

The court dismissed Campbell from this action on March 29, 2007.

In an order filed on July 13, 2007, the circuit court granted summary judgment to Hefley, stating:

2. That upon conclusion of oral argument the Court finds that this matter sounds in law and there are no issues involving the theories of unjust enrichment or for specific performance of a contract. The Court believes that the issue presented is what interest is conveyed by a deed which recites that the conveyance is subject to a pre-existing mortgage or mortgages when the mortgagor has defaulted.

3. The Court finds that where a deed contains language that the conveyance is subject to a mortgage or mortgages of record the absolute title is not conveyed and that the consequence of a default by the mortgagor leaves or vests the legal title in the original owner. In the instant case the court finds that the conveyances made by Sherry Groves and her grantees are not valid to divest [appellee] of title to the real property.

4. The Motion for Summary Judgment by [appellee] is hereby granted and that title is hereby quieted in him for the above described property subject to any mortgages of record held by the First National Bank of Green Forest, Arkansas.

Appellants then pursued this appeal.

The law is well settled that summary judgment is to be granted by a trial court only when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *Jayel Corp. v. Cochran*, 366 Ark. 175, 234 S.W.3d 278 (2006).

In their first point, appellants contend that the doctrine of res judicata, specifically, its claim-preclusion aspect, barred Hefley from bringing this quiet-title action because the claims he brought in this action could have been, but were not, brought in the original lawsuit. The doctrine of res judicata has two aspects: claim preclusion and issue preclusion. *See Van Curen, supra*. The purpose of the res judicata doctrine is to put an end to litigation by preventing a party who had one fair trial on a matter from relitigating the matter a second time. *Id.* Under

the claim–preclusion aspect of the doctrine of res judicata, a valid and final judgment rendered on the merits by a court of competent jurisdiction bars another action by the plaintiff or his privies against the defendant or his privies on the same claim or cause of action. *Id.* Res judicata bars not only the relitigation of claims that were actually litigated in the first suit, but also those that could have been litigated. *Jayel Corp., supra.* Where a case is based on the same events as the subject matter of a previous lawsuit, res judicata will apply even if the subsequent lawsuit raises new legal issues and seeks additional remedies. *Id.*

The essential issue in this action, therefore, is whether Groves and Sherry Holdings were in privity for purposes of res judicata. In that context, privity of parties means a person so identified in interest with another that he represents the same legal right. *Spears v. State Farm Fire & Cas. Ins.*, 291 Ark. 465, 725 S.W.2d 835 (1987). Our supreme court has never required strict privity in the application of res judicata; instead, it has supported the idea that there must be a “substantial identity of parties” to apply the doctrine. *See Parker v. Perry*, 355 Ark. 97, 131 S.W.3d 338 (2003); *Terry v. Taylor*, 293 Ark. 237, 737 S.W.2d 437 (1987); *Wells v. Heath*, 269 Ark. 473, 602 S.W.2d 665 (1980). Because the identity of parties is not a mere matter of form, but of substance, the rule of res judicata should not be defeated by minor differences of parties. *Rose v. Jacobs*, 231 Ark. 286, 329 S.W.2d 170 (1959). In *Arkansas Department of Human Services v. Dearman*, 40 Ark. App. 63, 68, 842 S.W.2d 449, 452 (1992), we explained:

It has been suggested that privity is merely a word used to say that the relationship between one who is a party and another person is close enough that a judgment that binds the one who is a party should also bind the other person It has also been held that the identity of parties or their privies for res judicata purposes is a factual determination of substance, not mere form.

(Citations omitted.)

Sherry Holdings (as a separate legal entity from the person Sherry Groves) not only could have, but should have been included in the initial lawsuit. In fact, Sherry Holdings attempted to intervene, but was not permitted to do so. As such, res judicata prevents Hefley from maintaining the same cause of action against Sherry Holdings in his second suit that he could have asserted in his first. However, the question remains whether the judgment in the first suit is binding on Sherry Holdings.

Only if Sherry Holdings and Sherry Groves are identical parties in interest is the question affirmatively answered. However, the resolution of this query rests on a factual determination as to whether Sherry Holdings is a sham corporation and a simple reincarnation of Sherry Groves. This fundamental question—the issue of piercing the corporate veil—was raised by Hefley in his second suit. But the issue was not addressed by the trial court in its summary-judgment determination. Because of this baseline omission and the genuine issues of material fact presented in this suit, we reverse and remand the case for trial.

Reversed and remanded.

GLOVER and BAKER, JJ., agree.